

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

June 23, 2003

GSBCA 16023-RELO

In the Matter of TRIPP BOONE

Tripp Boone, Stennis Space Center, MS, Claimant.

Robert E. Cluck, Chief, Financial Policies, Procedures and Compliance Branch,
Environmental Protection Agency, appearing for Environmental Protection Agency.

WILLIAMS, Board Judge.

An employee is not entitled to be reimbursed for his moving expenses when his reassignment resulted from his request and personal preference and was not in the interest of the Government.

Background

In 2000, claimant, Mr. Tripp Boone, an employee with the Environmental Protection Agency, applied for and was selected to a position in Research Triangle Park, North Carolina. His permanent duty station at the time of selection was Bay St. Louis, Mississippi. After relocating to Raleigh, near Research Triangle Park, Mr. Boone requested reassignment back to Bay St. Louis. In November 2001, Mr. Boone accepted a detail to the Environmental Chemistry Laboratory in Bay St. Louis. Mr. Boone's position became permanent, and he asked his approving official for assistance with his moving expenses and agreed that he would not request more than \$6300.

Mr. Boone was authorized actual expenses for shipping his household goods through a Government bill of lading, but elected to move the goods himself using a rental truck. He hired an individual, Mr. Robert Brown, to load his truck and drive a rental truck. Mr. Boone says that he paid Mr. Brown \$3275 in cash, but he did not receive a receipt for the cash payment.

In this claim, Mr. Boone is requesting recovery of \$3275, the amount he allegedly paid to Mr. Brown for moving services. However, when the agency investigated this claim, it determined that the authorizing official erred in approving the relocation expenses because

Mr. Boone's relocation was not in the interest of the Government. Rather, Mr. Boone voluntarily requested reassignment to a lateral position, his new position was not in connection with a merit promotion job announcement, and he was not directed to move. As such, the agency approving official denied recovery of the \$3275 in moving expenses.

The matter does not end here. The agency had already reimbursed Mr. Boone in the amount of \$1087.05 for the rental truck and related miscellaneous expenses and \$392.73 for storage fees and mileage of his privately-owned vehicle, for a total of \$1479.78. The agency determined that it paid this amount in error, but has not yet billed Mr. Boone for this amount as it is awaiting our decision.

Discussion

When an employee is transferred from one permanent duty station to another, for the purpose of determining relocation benefits, the transfer must be characterized as being "in the interest of the Government" or "primarily for the convenience or benefit of an employee." Jackie Leverette, GSBCA 15614-RELO, 02-1 BCA ¶ 31,825; Riyoji Funai, GSBCA 15452-RELO, 01-1 BCA ¶ 31,342, at 154,778. If the primary beneficiary is the Government, the employee is entitled to receive (subject to regulatory constraints) certain benefits. Id. These include expenses of transportation of the employee, his family, and his household goods; real estate transaction expenses; and a miscellaneous expense allowance. Id. If the primary beneficiary is the employee, on the other hand, none of these expenses -- not even transportation of persons and property -- may be paid from Government funds. Id. (citing 5 U.S.C. §§ 5724(a)(1), (2), (h); 5724a(a), (c), (d), (f); Ross K. Richardson, GSBCA 15286-RELO, 00-2 BCA ¶ 31,131).

An agency's determination as to the primary beneficiary of a transfer is discretionary, and we will not overturn it unless it is arbitrary, capricious, or clearly erroneous under the facts of the case. Funai (citing Eugene R. Platt, 59 Comp. Gen. 699 (1980), modified on reconsideration, 61 Comp. Gen. 156 (1981)); Earl Gongloff, GSBCA 13860-RELO, 97-1 BCA ¶ 28,792; Paul C. Martin, GSBCA 13722-RELO, 98-1 BCA ¶ 29,412 (1996)).

Here, the agency determined that Mr. Boone's authorizing official was not familiar with Government regulations regarding approving relocation benefits and that he had erroneously authorized moving expenses because Mr. Boone's relocation was not in the interest of the Government. The agency reasoned that Mr. Boone voluntarily requested reassignment to a lateral position, and that his move was not in connection with a merit promotion job announcement or a directed order to move; it was initiated by the employee for the employee's convenience. As such, there was never any authority to reimburse Mr. Boone for his moving expenses in the first place. Thus, it is unfortunate that rather than recover the \$3275 he is seeking, Mr. Boone is indebted to the agency in the amount of \$1479.78 which he erroneously received for the rented truck, storage, and related expenses. See Wendy Castineira, GSBCA 15092-RELO, 00-1 BCA ¶ 30,740. In Castineira, the claimant had been reimbursed for \$15,935.19 but had claimed an additional \$83.65 for two days of temporary lodging expenses and long distance telephone charges. In the process of reviewing that claim, the agency realized that Ms. Castineira had never been entitled to reimbursement in the first instance because she was a new appointee. As we recognized in Castineira, "It is well settled, however, that travel orders which erroneously authorize

relocation expenses . . . cannot create a right to reimbursement in excess of statutory and regulatory entitlements." Id. (citing William Archilla, GSBCA 13878-RELO, 97-1 BCA ¶ 28,799). "This is true regardless of whether the employee relied to his or her detriment on the erroneous travel orders." Id.; see also Larry Smith, GSBCA 15686-RELO, 02-1 BCA ¶ 31,692 ("It is well settled that a Government official may not obligate the Government to spend money in violation of statute or regulations.").

We conclude that the agency properly determined that claimant owes the agency the \$1479.78 he erroneously received. By statute, this Board is not empowered to waive that debt; only the agency may. The agency may waive repayment of this debt if it concludes that collection would be "against equity and good conscience and not in the best interests of the United States" and if there is no indication of "fraud, misrepresentation, fault, or lack of good faith" on the part of the person whose debt is requested to be waived. 5 U.S.C. § 5584(a)(2)(A) (2000); see, e.g., Jennings W. Bunn, GSBCA 15656-TRAV, 02-2 BCA ¶ 31,930; Brian Johnson, GSBCA 15316-RELO, 01-1 BCA ¶ 31,337; Gerald A. Sherman, GSBCA 13791-TRAV, 97-2 BCA ¶ 29,299. The exercise of this authority is committed entirely to the discretion of the agency and is not within the purview of this Board's review function.

Decision

The claim is denied. Claimant is indebted to the Environmental Protection Agency in the amount of \$1479.78 as a result of relocation expenses erroneously received without a statutory or regulatory basis for entitlement. The agency may waive repayment of this debt in accordance with the standard articulated above.

MARY ELLEN COSTER WILLIAMS
Board Judge